

# **MISSOURI COURT OF APPEALS WESTERN DISTRICT**

**GARY MICHAEL CLARK, APPELLANT**

**vs.**

**MISSOURI LOTTERY COMMISSION AND COMMUNITY BANK OF EL DORADO  
SPRINGS, RESPONDENTS**

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DOCKET NUMBER WD78060

Date: June 23, 2015

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Appeal from:

The Circuit Court of Cole County, Missouri  
The Honorable Jon E. Beetum, Judge

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Appellate Judges:

Before Division Four: Alok Ahuja, C.J., Joseph M. Ellis, J. and Janet Sutton, Sp.J.

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Attorneys:

Kendall R. Vickers, for Appellant

Matthew J. Laudan, for Respondent Missouri State Lottery Commission

John S. Pletz, for Resondent Community Bank of El Dorado Springs

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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Before Division Four Judges: Alok Ahuja, C.J., Joseph M. Ellis, J. and Janet Sutton, Sp. J.

Appellant Gary Clark won the Missouri Lottery “Lifetime Riches” prize, which entitled him to an annual \$50,000.00 payment for the rest of his life with a minimum payout of thirty years. Appellant subsequently took out two loans with Respondent Community Bank of El Dorado Springs (“Community Bank”). In doing so, Appellant granted Community Bank a security interest in the assignment of his “Missouri Lottery Payments.” The assignment agreement indicated that Appellant agreed to have all funds from the Missouri Lottery Commission deposited in an account at Community Bank for the purpose of securing his debts owed to Community Bank.

In 2013, Appellant filed a petition for declaratory judgment against Community Bank and the Missouri Lottery Commission seeking to have the assignment of his lottery proceeds, and the loan agreements resulting therefrom, declared void. Appellant argued that the assignment was unlawful and must be declared void because § 313.285.1 of the State Lottery Law prohibits the assignment of lottery prizes. Community Bank subsequently filed a motion for summary judgment contending that the assignment was valid under § 400.9-406 of Missouri’s Uniform Commercial Code. The Circuit Court of Cole County granted summary judgment in favor of Community Bank and awarded Community Bank costs and attorney’s fees. Appellant now appeals from the circuit court’s grant of summary judgment.

**AFFIRMED**

**Division Four holds:**

(1) The circuit court did not err in granting summary judgment in favor of Community Bank because, although § 313.285.1 prohibits the assignment of lottery proceeds without an appropriate judicial order, § 400.9-406(f) deems ineffective any statute that prohibits or restricts the assignment of accounts and, under § 400.9-102(a)(2), lottery winnings are included in the definition of an “account.” Section 400.9-406(f), therefore, renders § 313.285.1 ineffective to the extent that it prohibits or restricts the assignment of lottery prizes. Moreover, the current version of § 313.285.1 was adopted prior to

enactment of § 400.9-406(j) in which the legislature expressly provided that § 400.9-406 prevails over any other inconsistent statute. Therefore, to the extent that § 313.285.1's prohibition on the assignment lottery prizes is inconsistent with § 400.9-406(f), § 400.9-406(f) prevails. Thus, it follows that, despite § 313.285.1, Appellant's assignment of his lottery proceeds to Community Bank in order to secure the two loans constitutes a valid assignment.

Opinion by Joseph M. Ellis, Judge

Date: June 23, 2015

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